

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Invasive Species/Infested Waters
Citation Issued to Donald James
Diedrich; Citation No. 129312

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference before Administrative Law Judge Barbara L. Neilson on August 14, 2012. Conservation Officer Adam Block participated in the Conference on behalf of the Department of Natural Resources (DNR). Donald J. Diedrich participated on his own behalf. The parties agreed that no formal hearing would be needed and that the Administrative Law Judge could make a recommendation based on the record created during the Prehearing Telephone Conference. The OAH record closed at the conclusion of the conference call on August 14, 2012.

STATEMENT OF ISSUE

The issue presented in this matter is whether Donald J. Diedrich was properly issued a civil citation under Minn. Stat. §84D.10, subd. 4(b),¹ on May 12, 2012, for transporting his watercraft with the drain plug in place.

The Administrative Law Judge concludes that Mr. Diedrich violated Minn. Stat. § 84D.10, subd. 4(b), on that date, and recommends that the Commissioner affirm the Citation.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 12, 2012, Donald J. Diedrich transported his boat from his home with the drain plug removed. He stopped to pick up a friend at the friend's home, which is located two blocks away from Prior Lake. They proceeded to the Sandpoint public access on the north side of Prior Lake. At some point during the ride to the access, Mr. Diedrich's friend (who was riding in the boat) put the boat's drain plug in place.²

¹ Unless otherwise noted, all citations to Minnesota Statutes are to the 2011 edition.

² Test. of Donald Diedrich.

2. Conservation Officer Adam Block was on duty at the Sandpoint public access on Prior Lake on May 12, 2012. From his position, he could monitor vehicle traffic on Carriage Hill Parkway, which is a public road near the access. Officer Block issued citations to individuals who he had observed traveling on Carriage Hill Parkway and entering the public launch area pulling watercraft with drain plugs in place.³

3. At approximately 6:00 p.m., Officer Block saw Mr. Diedrich's pick-up truck, which was pulling a red Lund boat, enter the public access from Carriage Hill Parkway. At no time while Officer Block was watching Mr. Diedrich and his boat did anyone put the drain plug into the boat. The plug was in place in the boat from the time it left the public road until it entered the public access.⁴

4. Officer Block issued Mr. Diedrich Civil Citation No. 129312. The citation assessed a \$50 penalty for transporting watercraft with the drain plug not removed.⁵

5. Mr. Diedrich filed a timely appeal of the citation.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. This matter is properly before the Administrative Law Judge and the Commissioner of Natural Resources pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. Minnesota Statutes § 84D.10, subd. 4(b), states: "Drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting water-related equipment."

3. DNR Conservation Officers are authorized to issue warnings or citations to a person who violates Minn. Stat. § 84D.10, subd. 4(b), by failing to remove plugs from water-related equipment before transporting that equipment.⁶

4. Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be considered under the procedures in Minn. Stat. § 116.072, subd. 6, if the person who received the citation requests a hearing within 15 days after receipt of the citation. Mr. Diedrich filed a timely appeal and request for hearing.

5. The Department has substantiated the violation and Citation.

6. It is appropriate that the Commissioner affirm Invasive Species Civil Citation No. 129312 and require Mr. Diedrich to pay a \$50 fine for violating Minn. Stat. § 84D.10, subd. 4(b).

³ Testimony of Adam Block.

⁴ Test. of A. Block.

⁵ Test. of A. Block; Civil Citation No. 129312.

⁶ See Minn. Stat. § 84D.13, subd. 4(4).

Based on the Conclusions, and for the reasons set forth in the Memorandum below which is incorporated in the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that Invasive Species/Infested Waters Civil Citation No. 129312 issued to Donald J. Diedrich be AFFIRMED.

September 13, 2012

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may within those five days comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63 and 14.69.

MEMORANDUM

During the hearing, Mr. Diedrich testified he always removes the drain plug from his boat and lets the water drain out after he takes the boat out of the water. However, he asserted that he was unaware of the statutory requirement that the plug be removed while transporting the boat, and requested clarification of the requirement. Mr. Diedrich said that Prior Lake is the only lake on which he boats. He also pointed out that the boat was transported less than a few blocks with the drain plug in, and testified that the drain plug was completely dry when he showed it to Officer Block at the Sandpoint access.

Officer Block indicated that Minn. Stat. § 84D.10, subd. 4(b), has been in effect since 2010. He interprets the law to require that boats that are being transported on public roadways have their drain plugs removed, and indicated that he would not have found a violation if the plug had been inserted after Mr. Diedrich pulled off Carriage Hill Parkway and entered the DNR access area. He emphasized that, on the day the citation was issued, Mr. Diedrich's friend did not claim that he put the plug into the boat after they arrived at the access. In addition, he credibly testified that he observed Mr. Diedrich's vehicle and boat as it proceeded along Carriage Hill Parkway and entered the park surrounding the access and did not see Mr. Diedrich or his friend put the plug in place during that time.

Minnesota law requires the removal or opening of drain plugs during transportation of a boat, regardless of whether the transportation occurs before the boat is placed in the water or after the boat is removed from the water. The statute does not draw any distinctions based on the distance traveled or the number of bodies of water used by a particular boater.

The Administrative Law Judge concludes that Officer Block's interpretation that the statute applies when a boat is being pulled on a public roadway reflects a fair and common-sense reading of the statute. When the requirement to remove drain plugs was originally added to Minnesota Statutes in 2010, the language clearly required that persons "leaving waters of the state must drain boating-related equipment holding water and live wells and bilges by removing the drain plug before transporting the watercraft and associated equipment *on public roads*" and that drain plugs "must be removed or opened while transporting watercraft *on a public road*."⁷ In 2011, the statute was further amended, as follows:

Persons leaving public waters; report transporting water-related equipment.

- (a) A person When leaving waters of the state a person must drain boating-related water-related equipment holding water and live wells and bilges by removing the drain plug before transporting the watercraft and associated water-related equipment on public roads off the water access site or riparian property.
- (b) Drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting watercraft on a public road water-related equipment.⁸

Although the specific reference to "public roads" was deleted from the most recent version of the statute, it remains clear that the restriction is intended to apply once boats leave the shoreline or the access site.

It is undisputed that Mr. Diedrich's boat was transported for at least a short distance with its drain plug in place, as charged in the Citation. This amounts to a violation of the statute. Although Mr. Diedrich was not aware of the statute, he is properly expected to comply with the Minnesota laws applicable to boaters. The Administrative Law Judge concludes that the citation was properly issued.

B.L.N.

⁷ See Laws of Minnesota 2010, Chapter 361, Art. 4, Sec. 25 (emphasis added).

⁸ See Laws of Minnesota 2011, Chapter 107, Sec. 26 (amending Minn. Stat. § 84D.10, subd. 4(a) and (b)).